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NO. 80-2097

IN THE

Supreme Court of the United States

POTTER INSTRUMENT COMPANY, INC.
Petitioner,

v.

STORAGE TECHNOLOGY CORPORATION
TELEX COMPUTER PRODUCTS, INC.
SPERRY CORPORATION
CONTROL DATA CORPORATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY BRIEF

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October Term, 1980

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TELEX COMPUTER PRODUCTS, INC.
SPERRY CORPORATION
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PETITIONER'S REPLY BRIEF

NOW COMES the Petitioner, Potter Instrument Company, Inc. (PICO) and replies to Respondents' Brief in opposition to its Petition for Certiorari.

This court should grant the petition to resolve the issues clearly presented by this case.

The broad issue presented by this case is:

I. Does laches apply in a patent case when the period of delay has been less than six years?

A more narrow issue within the scope of the broad issue above is:

II. Does a finding of laches preclude an award of damages for patent infringement when the period of delay has been less than six years?

The Circuit Courts of Appeals that have considered this issue are divided. The United States Supreme Court has never spoken on this issue. No Supreme Court case cited in Respondents' Brief deals with laches in a patent infringement case.

Respondents' Brief either mischaracterizes PICO's position or begs the question. Respondents'

summary of argument is succinctly stated on Page 6 of their Brief.

Urging denial of this petition, Respondents argue that "the courts below correctly interpreted a lengthy evidentiary record in finding laches..." (Respondents' Brief, Page 6). PICO does not dispute the findings of fact made by the District Court but only disputes that laches applies when the period of delay has been less than six years. The District Court stated "...laches should be applied where the delay has been less than six years..." (District Court Opinion appearing in Appendix to Respondents' Brief at Page A-15; last full paragraph).

Respondents further argue that "...this court should not review the extensive factual findings which were entered...". We agree. However, the issues of law enumerated above remain to be decided.

Respondents argue that "...the courts below followed this court's previous holdings in respect to laches". That begs the question since this court has never decided a patent case on laches. Had such a case been decided by this court, Respondents surely would have cited it in their Brief. Not one of the Supreme Court cases cited by Respondents deals with laches in a patent infringement action.

Respondents further argue that "no decisions are in conflict with the decisions below". There are no decisions by this court that are pertinent.

Respondents further argue that "the Court of Appeals had no jurisdiction...". PICO disagrees. The Fourth Circuit Court of Appeals held that it had jurisdiction. The Supreme Court denied a Petition for Writ of Certiorari raising this

question. The Petition was denied on December 1, 1981, in Supreme Court Docket Number 80-561. This same issue has again been raised by Respondents in this court's Docket Number 81-52. PICO opposes the grant of the Petition in Docket Number 81-52 for the same reasons that it opposed the grant of Petition in Docket Number 80-561. PICO does not, however, intend to file an opposing brief in Docket Number 81-52 at this time.

Summary

In summary, the United States Supreme Court should grant the Petition for Writ of Certiorari to resolve the issues presented in this case. Respondents' arguments opposing the Writ are not persuasive.

Respectfully submitted,

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